

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
v. : Criminal No.
BENJAMIN G. LENKIEWICZ & : Title 18, United States Code,
JOSEPH F. BATTAGLIA : Sections 371, 1001 & 2

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges as follows:

COUNT 1
(Conspiracy)

Background

1. At various times relevant to this Indictment:
 - a. Defendant **BENJAMIN G. LENKIEWICZ** was a loan broker and the principal of BGL Consulting, a business in Ocean County, New Jersey that, among other things, assisted borrowers in obtaining business loans, including loans guaranteed by the United States Small Business Administration (hereinafter "SBA").
 - b. Defendant **JOSEPH F. BATTAGLIA** was a resident of Atlantic County, New Jersey.
 - c. A.R., a co-conspirator not named as a defendant herein, was a resident of Atlantic County, New Jersey.
 - d. Universal Windows Products (hereinafter "Universal Windows") was a business in Camden County, New Jersey that, among other things, manufactured and sold windows.

Purchase of Universal Windows

2. In or around mid 1999, defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. agreed to jointly purchase Universal Windows. Defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. further agreed that they would be co-owners and co-managers of Universal Windows.

3. In or around mid 1999, defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. retained defendant **BENJAMIN G. LENKIEWICZ** to assist them in obtaining a commercial loan to purchase Universal Windows.

4. Although defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. agreed to jointly purchase Universal Windows as co-owners and co-managers, defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. later agreed that defendant **JOSEPH F. BATTAGLIA** would not be named as a mortgagee on any loans or notes pertaining to Universal Windows.

5. On or about December 3, 1999, Co-conspirator A.R. signed a contract for the purchase of Universal Windows (hereinafter "U.W. Contract") for \$2,400,000, which price included Universal Windows' real estate and building, inventory, equipment, good will, and trade name. This contract stated Co-conspirator A.R. had made a \$700,000 down payment with the sellers' agent.

6. On or before December 3, 1999, defendant **BENJAMIN G. LENKIEWICZ** sought to obtain a business loan with a private, commercial lender in Morris County, New Jersey (hereinafter "Lender") on behalf of defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. for the purchase of Universal Windows.

7. On or about December 23, 1999, the Lender requested that the SBA guarantee Co-conspirator A.R.'s commercial loan for the purchase of Universal Windows.

Overview of the SBA Loan Guarantee Program

8. The SBA is a federal agency of the Executive Branch that administers assistance to American small businesses. This assistance includes guaranteeing loans that are issued by certain lenders to qualifying small businesses. Under the SBA loan guarantee program, the actual loan is issued by a commercial lender, but the lender receives the full faith and credit backing of the United States Federal Government on a percentage of the loan. Therefore, if a borrower defaults on an SBA guaranteed loan, the commercial lender may seek reimbursement from the SBA, up to the percentage of the guarantee. By reducing the risk to commercial lenders, this SBA loan guarantee program enables lenders to provide loans to qualifying small businesses when financing is otherwise unavailable to them on reasonable terms through normal lending channels.

9. The following processes and requirements usually apply when a borrower seeks an SBA guaranteed loan:

a. The borrower must first seek a business loan from a commercial lender. The borrower must meet the commercial lender's eligibility requirements for the loan, which include, among other things, that the borrower be creditworthy and have the ability to repay the loan.

b. If the borrower meets the commercial lender's eligibility requirements for the loan, the commercial lender requests that the SBA guarantee the loan. The borrower, however, must apply for the loan guarantee program and must also meet the SBA's eligibility requirements, which include, among other things, that the borrower qualify as a small business as determined under federal law; be creditworthy; and have the ability to repay the loan.

c. The SBA often requires that the borrower make a "capital injection" into the business venture. A "capital injection" requires the borrower to invest a certain amount of his or her own money or assets into the business venture, such as a down payment for the purchase of property. The purpose of the "capital injection" is to ensure the borrower bears some degree of risk in the business venture.

The SBA Guarantees a Loan for the Purchase of Universal Windows

10. On or before December 22, 1999, defendant **BENJAMIN G. LENKIEWICZ** prepared an "SBA Application for Business Loan" (hereinafter "SBA Application") that named Co-conspirator A.R. as the applicant. This SBA Application requested the following amounts of money for the following purposes:

Purpose of Proceeds	Amount Requested
Land Acquisition	\$360,000
Acquisition and/or Repair of Machinery and Equipment	\$232,000
Working Capital	\$15,000
Acquisition of Existing Business	\$1,108,000
All other	\$35,000
Total Amount Requested	\$1,750,000

11. The SBA Application required that 100% of the business' ownership, including all proprietors, partners, officers, and directors be listed in this application. Defendant **BENJAMIN G. LENKIEWICZ**, although aware of defendant **JOSEPH F. BATTAGLIA**'s ownership interest in Universal Windows, did not list or identify defendant **JOSEPH F. BATTAGLIA** as an owner, proprietor, partner, officer, or director in this SBA Application.

12. On or about December 23, 1999, the SBA agreed to guarantee 42.85% of the requested \$1,750,000 loan, subject to the following terms and conditions:

a. that Co-conspirator A.R. make at least a \$704,000 "capital injection" into Universal Windows;

b. that the Lender obtain a 100% interest in Co-conspirator A.R.'s personal residence, subject only to pre-existing and pre-disclosed mortgages;

c. that Universal Windows' ownership and managers remain as stated in the SBA Application and not change without the Lender's written approval; and

d. that Co-conspirator A.R. not pledge, encumber, or otherwise dispose of his property or assets without the Lender's written approval.

THE CONSPIRACY

13. From in or around April 1999 to on or about January 5, 2000, in Ocean and Camden Counties, in the District of New Jersey and elsewhere, defendants

BENJAMIN G. LENKIEWICZ and JOSEPH F. BATTAGLIA

knowingly and willfully conspired and agreed with each other, A.R., and others to make materially false, fictitious, and fraudulent statements and representations, to make and use false writings and documents knowing them to contain materially false and fraudulent statements and entries, and to conceal and cover up by trick, scheme, and device material facts within the jurisdiction of the executive branch of the United States, namely, the SBA, contrary to Title 18, United States Code, Section 1001.

OBJECTS OF THE CONSPIRACY

14. It was an object of the conspiracy for defendant **BENJAMIN G. LENKIEWICZ** to profit by brokering and obtaining an SBA guaranteed loan for defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. through the making and use of false statements and documents and the concealment of material facts from the Lender and the SBA.

15. It was a further object of the conspiracy for defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. to obtain an SBA loan in the amount of \$1,750,000 to which they were not entitled.

MANNER AND MEANS OF THE CONSPIRACY

16. It was a part of the conspiracy that defendant **BENJAMIN G. LENKIEWICZ**, defendant **JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. agreed to fraudulently obtain an SBA guaranteed loan for the purchase of Universal Windows.

17. It was a further part of the conspiracy that defendant **BENJAMIN G. LENKIEWICZ** completed the SBA Application, referred to in Paragraphs 10-11 above, which application concealed defendant **JOSEPH F. BATTAGLIA's** ownership and interest in Universal Windows.

18. It was a further part of the conspiracy that Co-conspirator A.R. falsely represented in the U.W. Contract that he had deposited \$700,000 into an interest bearing account belonging

to the sellers' agent. In fact, Co-conspirator A.R. did not have \$700,000 in cash on hand or in assets and did not deposit this amount with the sellers, or their agent, as a down payment for the purchase of Universal Windows.

19. It was a further part of the conspiracy that defendants **BENJAMIN G. LENKIEWICZ** and **JOSEPH F. BATTAGLIA** instructed Co-conspirator A.R. to provide defendant **BENJAMIN G. LENKIEWICZ** with a personal check in the amount of \$700,000, which check they agreed to use to falsely represent to the Lender and the SBA that Co-conspirator A.R. made the "capital injection," as required by the SBA. Defendants **BENJAMIN G. LENKIEWICZ, JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. knew and had agreed that this \$700,000 check would not be given to the sellers for deposit.

20. It was a further part of the conspiracy that Co-Conspirator A.R. and the sellers of Universal Windows entered into a Mortgage Agreement, which agreement defendants **BENJAMIN G. LENKIEWICZ, JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. agreed to conceal from the Lender and the SBA. Under the terms of this Mortgage Agreement, which was contrary to the terms and conditions of this SBA guaranteed loan, the sellers of Universal Windows agreed to loan Co-conspirator A.R. \$700,000 in exchange for a mortgage secured by Co-conspirator A.R.'s personal residence.

21. It was a further part of the conspiracy that the sellers of Universal Windows, in exchange for the Mortgage Agreement referred to in Paragraph 20 above, agreed to reduce the \$2.4 million purchase price of Universal Windows by approximately \$700,000.

22. It was a further part of the conspiracy that the sellers, defendant **JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. signed an "Unconditional Guarantee," which guarantee defendants **BENJAMIN G. LENKIEWICZ**, **JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. agreed to conceal from the Lender and the SBA. By signing this "Unconditional Guarantee," defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. agreed that they would pay the sellers \$700,000, as required by the Mortgage Agreement referred to in Paragraphs 20-21 above.

23. It was a further part of the conspiracy that Co-conspirator A.R. signed a U.S. Department of Housing and Urban Development-1 Uniform Settlement Statement (hereinafter "HUD-1 Statement"), which statement falsely represented that Co-conspirator A.R. had paid the sellers a \$700,000 down payment for the purchase of Universal Windows.

24. It was a further part of the conspiracy that **BENJAMIN G. LENKIEWICZ**, defendant **JOSEPH F. BATTAGLIA**, and Co-conspirator A.R. used the false and fraudulent documents and writings, including the SBA Application, the U.W. Contract, the

HUD-1 Statement, the \$700,000 personal check, and others, to cause the Lender to disburse an SBA guaranteed loan in the amount of \$1,750,000 to Co-conspirator A.R. and defendant **JOSEPH F. BATTAGLIA**.

OVERT ACTS

25. In furtherance of the conspiracy and in order to effect the objects thereof, defendants **BENJAMIN G. LENKIEWICZ**, **JOSEPH F. BATTAGLIA**, and their co-conspirators caused the following overt acts to be committed in the District of New Jersey and elsewhere:

a. On or about December 22, 1999, defendant **BENJAMIN G. LENKIEWICZ** prepared and caused to be prepared an SBA Application, which application concealed defendant **JOSEPH F. BATTAGLIA's** ownership and interest in Universal Windows.

b. On or before December 29, 1999, defendant **BENJAMIN G. LENKIEWICZ** instructed defendant **JOSEPH F. BATTAGLIA** and Co-conspirator A.R. to provide defendant **BENJAMIN G. LENKIEWICZ** with a false and fraudulent \$700,000 check.

c. On or about December 30, 1999, defendant **BENJAMIN G. LENKIEWICZ** presented and caused to be presented the false and fraudulent \$700,000 check to the Lender and the SBA.

d. On or about December 30, 1999, Co-conspirator A.R. signed a false and fraudulent HUD-1 Statement.

e. On or about January 5, 2000, defendant **BENJAMIN G. LENKIEWICZ** notarized an "Unconditional Guarantee" for the Mortgage Agreement referred to in Paragraphs 20-21 that was concealed from the Lender and the SBA.

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(Conspiracy)

Background

1. The allegations set forth in Paragraph 1a and Paragraphs 8 and 9 of Count 1 of this Indictment are hereby realleged as if set forth at length herein.

2. Vincent Simonelli, a co-conspirator not named as a defendant herein, was the principal of Ocean Auto Mall, Inc. (hereinafter "OAM"), a business in Ocean County, New Jersey that, among other things, acquired, built, and sold commercial properties. Co-conspirator Vincent Simonelli owned a one-acre parcel of commercial real estate in Ocean County. This one-acre parcel contained an 8,000 square foot building, which was subdivided into four adjacent units - Units 301, 303, 305, and 307. The property was commercially zoned and specifically designed to accommodate businesses engaged in the maintenance and repair of automobiles.

3. Fred D. Madorma, a co-conspirator not named as a defendant herein, was the owner and operator of Auto Champs, Inc. (hereinafter "Auto Champs"), a business in Ocean County, New Jersey engaged in the repair and maintenance of automobiles.

4. On or about February 11, 1999, Co-conspirator Fred D. Madorma purchased Units 301 and 303 from Co-conspirator Vincent Simonelli with an SBA guaranteed loan brokered by defendant **BENJAMIN G. LENKIEWICZ**. Co-conspirator Fred. D. Madorma operated Auto Champs on Units 301 and 303.

Purchase of Units 305 and 307

5. In or around April 1999, Co-conspirator Vincent Simonelli agreed to sell Units 305 and 307 to Co-conspirator Fred D. Madorma. Co-conspirator Fred D. Madorma retained defendant **BENJAMIN G. LENKIEWICZ** to assist him in obtaining a commercial loan to purchase Units 305 and 307.

6. On or about April 1, 1999, Co-conspirator Vincent Simonelli and Co-conspirator Fred D. Madorma entered into two contracts for the sale of Units 305 and 307. The total contract price for the two units was \$520,000. On or about October 1, 1999, Co-conspirator Vincent Simonelli and Co-conspirator Fred D. Madorma amended these contracts as follows:

	Purchase Price	Down Payment	Balance Due at Closing
Amended Contract for Unit 305	\$285,000	\$65,000	\$220,000
Amended Contract for Unit 307	\$285,000	\$65,000	\$220,000
Totals	\$570,000	\$130,000	\$440,000

7. On or before December 8, 1999, Co-conspirator Fred D. Madorma, through defendant **BENJAMIN G. LENKIEWICZ**, applied for a business loan with the same Lender referred to in Paragraph 6 of Count 1 of this Indictment to purchase Units 305 and 307.

8. On or about December 8, 1999, the Lender requested that the SBA guarantee Co-conspirator Fred D. Madorma's commercial loan for the purchase of Units 305 and 307.

The SBA Guarantees a Loan for the Purchase of Units 305 & 307

9. On or before December 3, 1999, defendant **BENJAMIN G. LENKIEWICZ** prepared an "SBA Application for Business Loan" on behalf of Co-conspirator Fred D. Madorma. This application requested the following amounts of money for the following purposes:

Purpose of Proceeds	Amount
Land Acquisition	\$420,425
Other	\$20,575
Total Amount Requested	\$441,000

10. On or about December 8, 1999, the SBA agreed to guarantee 75% of Co-conspirator Fred D. Madorma's \$441,000 loan, subject to the following terms and conditions:

- a. that Co-conspirator Fred D. Madorma make at least a \$149,575 "capital injection" for the purchase of Units 305 and 307;
- b. that the Lender obtain a 100% interest in Units 305 and 307 not subject to any other liens; and
- c. that the Lender require Co-conspirator Fred D. Madorma to certify that he would not pledge, encumber, or otherwise dispose of his property or assets without the Lender's written approval.

THE CONSPIRACY

11. From on or about April 1, 1999 to on or about December 29, 1999, in Ocean County, in the District of New Jersey and elsewhere, the defendant

BENJAMIN G. LENKIEWICZ

knowingly and willfully conspired and agreed with Fred D. Madorma, Vincent Simonelli, and others to make materially false, fictitious, and fraudulent statements and representations, to make and use false writings and documents knowing them to contain materially false and fraudulent statements and entries, and to conceal and cover up by trick, scheme, and device material facts within the jurisdiction of the executive branch of the United States, namely, the SBA, contrary to Title 18, United States Code, Section 1001.

OBJECTS OF THE CONSPIRACY

12. It was an object of the conspiracy for defendant **BENJAMIN G. LENKIEWICZ** to profit by brokering and obtaining an SBA guaranteed loan for Co-conspirator Fred D. Madorma through the making and use of false statements and documents and the concealment of material facts from the Lender and the SBA.

13. It was a further object of the conspiracy for Co-conspirator Vincent Simonelli to profit from the sale of Units 305 and 307 through the making and use of false statements and documents and the concealment of material facts from the Lender

and the SBA.

14. It was further an object of the conspiracy for Co-conspirator Fred D. Madorma to obtain an SBA loan in the amount of \$441,000 to which he was not entitled.

MANNER AND MEANS OF THE CONSPIRACY

15. It was a part of the conspiracy that defendant **BENJAMIN G. LENKIEWICZ** and Co-conspirators Fred D. Madorma and Vincent Simonelli agreed to fraudulently obtain an SBA guaranteed loan for the purchase of Units 305 and 307.

16. It was a further part of the conspiracy that Co-conspirators Fred D. Madorma and Vincent Simonelli falsely represented in the amended contracts for Units 305 and 307, referred to in Paragraph 6 above, that Co-conspirator Fred D. Madorma made a \$130,000 down payment for the purchase of Units 305 and 307. In fact, Co-conspirator Fred D. Madorma did not have \$130,000 in cash on hand or in assets and did not deposit this amount with Co-conspirator Vincent Simonelli, or his agent, as a down payment for the purchase of the said units.

17. It was a further part of the conspiracy that **BENJAMIN G. LENKIEWICZ** instructed Co-conspirator Vincent Simonelli to create a letter (hereinafter "capital injection letter") that falsely represented that Co-conspirator Fred D. Madorma had paid \$149,575 as a down payment for the purchase of Units 305 and 307.

18. It was a further part of the conspiracy that Co-Conspirators Vincent Simonelli and Fred D. Madorma entered into a Loan and Security Agreement, which agreement defendant **BENJAMIN G. LENKIEWICZ** and Co-conspirators Vincent Simonelli and Fred D. Madorma agreed to conceal from the Lender and the SBA. Under the terms of this agreement, which was contrary to the terms and conditions of this SBA guaranteed loan, Co-conspirator Vincent Simonelli agreed to loan Co-conspirator Fred D. Madorma \$40,000 in exchange for a security interest in certain personal property belonging to Co-conspirator Fred D. Madorma and Auto Champs.

19. It was a further part of the conspiracy that Co-Conspirators Vincent Simonelli and Fred D. Madorma each signed a HUD-1 Statement, which statement falsely represented that Co-conspirator Fred D. Madorma had paid Co-conspirator Vincent Simonelli a \$149,575 down payment for the purchase of Units 305 and 307.

20. It was a further part of the conspiracy that **BENJAMIN G. LENKIEWICZ** and Co-conspirators Vincent Simonelli and Fred D. Madorma used false and fraudulent documents and writings, including the amended contracts, the HUD-1 Statement, the capital injection letter, and others, to cause the Lender to disburse an SBA guaranteed loan in the amount of \$441,000 to Co-conspirator

Fred D. Madorma.

OVERT ACTS

21. In furtherance of the conspiracy and in order to effect the objects thereof, defendant **BENJAMIN G. LENKIEWICZ** and his co-conspirators caused the following overt acts to be committed in the District of New Jersey and elsewhere:

a. On or about October 1, 1999, Co-conspirator Fred D. Madorma signed two contracts that falsely stated that he had made a \$130,000 down payment for the purchase of Units 305 and 307.

b. On or about December 16, 1999, defendant **BENJAMIN G. LENKIEWICZ** instructed Co-conspirator Vincent Simonelli to create the false and fraudulent capital injection letter referred to in Paragraph 17 above.

c. On or about December 28, 1999, defendant **BENJAMIN G. LENKIEWICZ** presented Co-conspirator Vincent Simonelli's false and fraudulent capital injection letter to the Lender and the SBA.

All in violation of Title 18, United States Code, Section 371.

COUNTS 3-6
(False Statements or Entries)

1. The allegations set forth in Paragraphs 1 through 12 and Paragraphs 14 through 25 of Count 1 of this Indictment are hereby realleged as if set forth at length herein.

2. On or about the dates listed below, in Ocean and Camden Counties, in the District of New Jersey and elsewhere, defendants

BENJAMIN G. LENKIEWICZ and
JOSEPH F. BATTAGLIA

in a matter within the jurisdiction of the executive branch of the United States, namely, the SBA, knowingly and willfully made and used, and caused to be made and used, false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, and concealed and covered up by trick, scheme, and device, and caused to be concealed and covered up by trick, scheme, and device certain material facts, as set forth below:

Count	Approximate Date	Description of Entry and Statement
3	December 22, 1999	SBA Application for Business Loan that concealed and covered up defendant JOSEPH F. BATTAGLIA 's ownership and interest in Universal Windows when in fact he was a co-owner and co-manager of Universal Windows.

4	December 30, 1999	Check # 1742, in the amount of \$700,000, which check was used to falsely represent that Co-conspirator A.R. made the required \$700,000 "capital injection" for the purchase of Universal Windows when in fact this \$700,000 "capital injection" was not made.
5	December 30, 1999	HUD-1 Statement, which falsely represented that Co-conspirator A.R. made the required \$700,000 "capital injection" for the purchase of Universal Windows when in fact this \$700,000 "capital injection" was not made.
6	January 5, 2000	Unconditional Guarantee for the \$700,000 Mortgage Agreement between Co-conspirator A.R. and the sellers of Universal Windows, which agreement and guarantee was concealed from the Lender and the SBA.

In violation of Title 18, United States Code, Sections 1001 and 2.

COUNTS 7-9
(False Statements or Entries)

1. The allegations set forth in Paragraphs 1 through 10 and Paragraphs 12 through 21 of Count 2 of this Indictment are hereby realleged as if set forth at length herein.

2. On or about the dates listed below, in Ocean County, in the District of New Jersey and elsewhere, the defendant

BENJAMIN G. LENKIEWICZ

in a matter within the jurisdiction of the executive branch of the United States, namely, the SBA, knowingly and willfully made and used, and caused to be made and used, false writings and documents knowing them to contain materially false, fictitious, and fraudulent statements and entries, and concealed and covered up by trick, scheme, and device, and caused to be concealed and covered up by trick, scheme, and device certain material facts, as set forth below:

Count	Approximate Date	Description of Entry and Statement
7	December 28, 1999	Capital Injection letter, which falsely represented that Co-conspirator Fred D. Madorma made the required \$149,575 "capital injection" for the purchase of Units 305 and 307 when in fact this \$149,575 "capital injection" was not made.

8	December 22, 1999	\$40,000 Loan and Security Agreement between Co-conspirators Vincent Simonelli and Fred D. Madorma that was concealed from the Lender and the SBA and contrary to the terms and conditions of Co-conspirator Fred D. Madorma's SBA guaranteed loan.
9	December 29, 1999	HUD-1 Statement, which falsely represented that Co-conspirator Fred D. Madorma made the required \$149,575 "capital injection" for the purchase of Units 305 and 307 when in fact this \$149,575 "capital injection" was not made.

In violation of Title 18, United States Code, Sections 1001 and 2.

A TRUE BILL.

FOREPERSON

CHRISTOPHER J. CHRISTIE
United States Attorney